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Glasnost and Perestroika at West Virginia University: The College of Law's Soviet Exchange Program

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GLASNOST AND PERESTROIKA AT WEST VIRGINIA UNIVERSITY: THE COLLEGE OF LAW'S SOVIET EXCHANGE PROGRAM

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I. INTRODUCTION

In December 1989 the Berlin Wall came down. That same month, the dean of a Soviet law school in a coal mining region of the Ukraine, emboldened by *Glasnost* and other changing Soviet policies, wrote a letter to me. Dean Viacheslaw Volkov inquired about the possibility of a scholarly exchange program between our schools.

In 1991, the Soviet Union, which the world had come to know as a highly centralized Communist-controlled state, dissolved into a loose confederation of Soviet republics. The Communist Party was suspended and even outlawed in some republics.

Also in that year, two Soviet legal scholars from Donetsk University traveled to the West Virginia University College of Law to deliver a series of lectures to the faculty and students. A few months later, two of my colleagues and I visited the teachers and students of the Faculty of Law and Economics at Donetsk University where we delivered a series of lectures about the American legal system. Thus, for the first time, the West Virginia University College of Law entered into an exchange program with a foreign law school.

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Other American law schools conduct more than eighty exchange programs with foreign law schools. These programs provide several important benefits for students and faculty. First, exposure to foreign legal systems is an important part of the education of the American lawyer as the twenty-first century approaches. Increasingly, American law firms find themselves structuring business transactions in a global economy. From our own experiences at the West Virginia University College of Law's placement office, it is clear that law firms eagerly pursue those law graduates who possess foreign language skills and have been exposed to other cultures.

American legal expertise will be valued in the developing global community not only for economic transactions, but also as it relates to a much wider variety of issues. For example, Professor James Friedberg of the West Virginia University College of Law faculty recently spoke at a conference in the African country of Burundi regarding human rights issues.

The second important advantage of exchange programs is what such programs tell us about our own legal system. For instance, a comprehensive study of the tort and insurance systems of other Western, industrialized countries was recently published. The study helps explain the dramatically escalating liability insurance premiums in the United States and the perception of a crisis in the insurance and legal systems in the mid-1980's when these phenomena did not occur elsewhere.¹

An exchange program with a Soviet law school offers particular advantages. It exposes our students to an economic and legal environment which is likely to be increasingly open to foreign trade and investment and to become a large market for American businesses in coming decades. The program also provides College of Law students and faculty an opportunity to witness firsthand the dramatic transformation of a society from a closed, socialist system to an open system that encourages free enterprise. During the past several decades, many books were written about the transformation

1. See WERNER PFENNIGSTORF & DONALD GIFFORD, *A COMPARATIVE STUDY OF LIABILITY LAW AND COMPENSATION SCHEMES IN TEN COUNTRIES AND THE UNITED STATES* (1991).

of capitalist economies into socialist economies. Few works, if any, addressed the issue of the transformation of a socialist economy to a capitalist economy.

Finally, if there is to be a conclusive end to the Cold War, it will occur because the Soviet republics have become integrated into the legal, economic, and academic spheres of the developed, Westernized countries. That is why a recent headline in the *Chronicle of Higher Education* opined, "A Marshall Plan For Higher Education in the Soviet Union Would Work Toward Ending the Cold War Once and For All."² That is also why the American Bar Association has undertaken a substantial project to encourage interaction between American law schools and the law schools of the former Soviet bloc.³

The purpose of this brief essay is not to describe in any meaningful way the process of change in the Soviet economic and legal systems. Reports on those issues will hopefully appear in subsequent issues of the *West Virginia Law Review* as the exchange program between the West Virginia University College of Law and the Faculty of Law and Economics at Donetsk University continues.

Instead, this essay attempts only to acquaint the readers of the *West Virginia Law Review* with the Donetsk exchange program. It also reports my initial impressions of the current upheaval in the Soviet legal and economic systems.

II. THE EXCHANGE PROGRAM BETWEEN WEST VIRGINIA UNIVERSITY AND DONETSK UNIVERSITY

The exchange program between West Virginia University's College of Law and the Faculty of Law and Economics at Donetsk University began with the February 1991 visit of Donetsk Dean Viacheslaw Volkov and Deputy Dean Vladimir Chichko to the West

2. Eugene P. Trani, *A Marshall Plan For Higher Education in the Soviet Union Would Work Toward Ending the Cold War Once and For All*, THE CHRON. OF HIGHER EDUC., Mar. 13, 1991, at B1.

3. Letter from James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA Approved Law Schools (Oct. 11, 1990) (copy on file with the *West Virginia Law Review*).

Virginia University College of Law. During his stay, Dean Volkov delivered three lectures to the students and faculty of the College of Law. These lectures covered the Soviet legal and political system, the changing economic system within the Soviet Union, and the Soviet legal profession and legal education. Deputy Dean Vladimir Chichko delivered a lecture on the Soviet criminal process.

In addition, the visiting Soviet legal educators met informally with the faculty and students of the College of Law in a variety of settings. For example, Dean Volkov, a specialist in Soviet constitutional law, discussed comparative constitutional law issues with Professors James McLaughlin and Robert Bastress of the College of Law, who both teach in the constitutional law area.

In May 1991 Associate Dean John W. Fisher, II and Professor Patrick McGinley of the College of Law faculty accompanied me to Donetsk. While visiting the Donetsk Law School, I had the opportunity to deliver three lectures to the students including ones covering the American political and legal system, the American tort system, and the American legal profession and legal education. Associate Dean Fisher lectured on American property law, and Professor Pat McGinley offered two lectures on environmental law and legal issues relating to mining.

In addition, the three of us visiting from West Virginia had the opportunity to meet with a number of people from the Soviet legal, political, and academic communities. We were privileged to be overnight guests at the Moscow apartment of two members of the Congress of People's Deputies, the Soviet Parliament.⁴ Around midnight, we observed a "kitchen debate" — in this case literally a debate in the kitchen of a Soviet apartment. It was somewhat different, however, than the legendary encounter between Soviet Premier Nikita Khrushchev and then Vice President Richard Nixon. Professor McGinley and I mediated a discussion between one of the noncommunist People's Deputies (who had been a coal miner prior to being elected to the Parliament) and a Communist Deputy regarding the

4. The Congress of People's Deputies voted to cede its legislative powers to other bodies after the dramatic "Second Russian Revolution" which followed the failed *coup d'etat* by Soviet military and Communist Party hardliners in August 1991.

timing and extent of wage increases for miners in the Donetsk area. The next day we met with the Sub-Committee on Veterans' Affairs of the Supreme Soviet, which was considering issues relating to medical care of veterans of the Afghan War. In their work, the Sub-Committee studied a report of the United States Veterans Administration on post-traumatic stress syndrome among the Vietnam veterans. In Donetsk, I had the opportunity to address the judges from the regional court system, and we met with representatives of a local *procurator's* (prosecutor's) office.

The College of Law and the Faculty of Law and Economics at Donetsk University have now entered into a formal, five-year agreement. This agreement anticipates that a delegation of faculty members — and possibly students — from the College of Law will visit the Faculty of Law and Economics at Donetsk University every other year beginning next spring. A delegation from Donetsk will visit West Virginia University in the alternate years. In the future, each delegation's length of stay will be increased, allowing the visiting scholars to engage in more substantial research. This formal exchange program is one of the first ongoing exchange programs between an American law school and a Soviet law school. It is believed to be the first continuing exchange program between an American law school and a Ukrainian law school.

III. LEGAL EDUCATION IN THE SOVIET REPUBLICS

The traditional lawyer in the Soviet republics is involved in the criminal litigation process. He or she is either a judge, a *procurator*, or a state-assigned, criminal-defense attorney. Those who serve as *procurators* and judges often graduate from one of a handful of elite Soviet legal educational institutions including Moscow State University, Serativ Law Institute, or the Hikov Law Institute. Like most countries in the world, other than the United States, the law degree is a five-year undergraduate program.

In the Soviet republics, of course, factories, mines, collective farms, and retail establishments traditionally have been owned and operated by the state.⁵ Accordingly, another major group of Soviet

5. Already however, numerous privately-owned retail businesses, artisans, and small farms are

lawyers are "legal advisors" who assist the state enterprises in complying with regulations and interacting with each other.

At the current time, there are more than 300,000 trained legal professionals in the Soviet republics.⁶ Those involved in Soviet legal education estimate that the opening of Soviet society and the transformation of the Soviet economy will require at least a doubling of legally trained persons.⁷

There are five institutions in the Soviet Union which are "law colleges." These colleges offer only programs in the law. In addition, there are faculties of law at forty-three Soviet universities. The term of study for lawyers is a five-year undergraduate program. The students are admitted by competitive examination, and often there are more applicants than there are positions available in the law schools. The entrance examinations presuppose a knowledge of history, foreign language, and Russian literature.

The Donetsk University Faculty of Law and Economics is a relatively young school. It was founded in 1981 by Dean Volkov. Donetsk University itself contains approximately 8,000 students. It was founded in 1965. The University offers programs of instruction in a wide variety of the humanities and liberal arts, but the curriculum does not include engineering or technical disciplines. It also offers a number of classes for evening and correspondence students.

The Faculty of Law and Economics is the first Soviet law school to combine training in the disciplines of law and economics. Graduates of the law school typically became legal advisors for collective farms, mining enterprises, or manufacturing enterprises. The law school offers degrees not only in law, but also in accounting and management.

appearing. It appears likely that in the near future a substantial percentage of productive (no pun intended) enterprises in the Soviet republics will be privately owned.

6. This number includes not only those trained as litigators and legal advisors, but also those who received specialized training at the secondary or high school level. These "lawyers" work in clerical positions in the court systems, prosecutors' offices, or in other government agencies such as those dealing with pensions. There is a three-year specialized high school program of training for these individuals. Dean Viacheslav Volkov, Address at the West Virginia University College of Law (Feb. 13, 1991).

7. *Id.*

The five-year law program at Donetsk combines the basic aspects of an undergraduate education with professional training in the law. As might be expected in an undergraduate program, the students enroll in a wide variety of liberal arts courses including history, theory of religion, and classes covering both Russian and world literature and culture. There is a demanding foreign language requirement. When I visited Donetsk in May 1991, one of the things I found most surprising was that more than one-third of the students were fluent enough in English to understand our lectures, laden with legal terms, without interpretation. The law-oriented component of the curriculum requires courses in state, civil, and criminal laws and documents. Students are also able to select a wide variety of law-related electives including labor law, taxation, foreign economic activities or enterprises, and management law.

For those students in the Soviet republics who are pursuing their first degree, the education is free. Students are also given a living allowance; this allowance is extremely meager, even compared with the salary paid workers. Students who perform well academically receive a 50% bonus on their living allowance.

Students studying with the Faculty of Law and Economics at Donetsk University know during their course of study where they will be working upon completion of their degree. Typically, there are three-way agreements between the "enterprises" who have agreed to employ the students upon their graduation, the students themselves, and the Faculty of Law and Economics. During our trip to Donetsk, the most frequently asked question by students was, "Is it really true that American law students will begin law school without being guaranteed a job?" At one level, the question suggested that the students had heard exaggerated stories about unemployment among American lawyers. At another level, however, the question suggests one of the differences between Soviet and American societies. Soviet citizens appear to have grown accustomed to a higher level of security in employment matters at the expense of less freedom and opportunity to change careers.

Legal education at Donetsk also incorporates practical training similar to that American law students receive during summer clerkships and in clinical programs. Typically, the students work at the

legal departments of enterprises, cooperatives, and joint enterprises after their third year of study. Following their final year of study, graduates typically complete a four-month legal apprenticeship.

Like their American counterparts, Soviet law students do not avoid law examinations or seminar papers. At the completion of the course of study they are given three comprehensive final examinations. They also must write a "diploma" paper, similar to a seminar paper in an American law school.

Lecture was the pervasive teaching method observed in classes offered by the Donetsk University Faculty of Law and Economics. The student texts were treatises, not casebooks. The students and faculty were not familiar with Socratic dialogue or the casebook method. When I described and demonstrated these methods, they found them quite different from those with which they were accustomed.

Demographically, approximately 50% of the law students at Donetsk were women. The composition of the faculty was really quite similar to that of the West Virginia University College of Law. Most of the older faculty members were men, but a high percentage of the younger faculty members were women.

Unlike in the United States, where law professors are responsible for both teaching and research, the Soviet republics maintain separate organizations of distinguished scholars who do not have classroom teaching responsibilities. While in Donetsk, we were able to meet with the scholars of the Institute of Industrial Relations of the Ukrainian Academy of Sciences. Several members of this group have specialties in legal matters. Although the teaching faculty at Donetsk University undertakes some research, its scholarship does not appear to be as extensive as what we expect from the faculty at the College of Law.

IV. EMERGING LEGAL AND ECONOMIC ISSUES FACING THE SOVIET REPUBLICS

An essay of this sort is not the occasion for an overview of Soviet law generally or even an analysis of a specific aspect of Soviet law. Nevertheless, it does provide an opportunity to offer some impres-

sions of the major issues and trends within the current Soviet legal and economic systems.

In my lecture to the faculty and students of Donetsk University on the American political and legal system, I intentionally focused on four issues: federalism, the protection of individual rights, separation of powers, and the balance between private property and public control. I chose these issues because of their contemporary significance in the Soviet Union.

One barometer of the degree of change and conflict within the Soviet Union is illustrated by the current uncertainty about the society's operative legal rules. It is even uncertain as to which governments — the Union or Confederation government in Moscow or those of the separate republics — are determining the content of the law. The scope of this uncertainty is compounded because in the Soviet system there have never been statutes, judicial decisions, or administrative regulations covering critical elements of a free-market system, such as property rights and contract rights.

This lack of clearly defined rules and the tension between governments as to who will determine the rules are major impediments to foreign trade and investment. When an American petroleum company seeks to invest in the oil rich properties of Kazakhstan, it finds that basic rules of contract formation and interpretation are not in place, and that predicting future taxes is speculative. Deciding whether contract rules and taxation will be established by the republic or by the Union is unpredictable, and identifying which officials have the ability to enter into binding arrangements is difficult.

As a non-expert, it appears to me that there are several precedents that might provide guidance to the Soviets for this situation. A system based predominantly on common or judge-made law is unlikely to succeed in the near future. Common law is an incremental evolutionary process not designed to deal with a wholesale transformation from a socialist economy to a free-market economy "within five hundred days." Adoption of a comprehensive civil code similar to those used in the continental-European, Western democracies is likely to be more effective. For example, following the Second World War, Japan — in an effort to become integrated into

the Western industrialized world — adopted a civil code substantially based on the German code.⁸ Further, a number of third world, African countries, have adopted civil codes substantially based upon those of France.⁹

In practice, the Soviet Union of the last seventy-five years has been dominated by a strong central government and a centralized Communist Party structure. With the startling transformation in 1991 of the Soviet Union to a loose confederation of apparently sovereign states, many of the powers and responsibilities formerly handled by the central government will be transferred to the constituent republics. For example, when we visited the Soviet Union in May, our Ukrainian hosts were delighted with the recent announcement that henceforth the Ukrainian Minister of Justice would be appointed by the Ukrainian Soviet and not by the Supreme Soviet in Moscow. This change appears insignificant when compared with the changes in August and September 1991 following the hardliners' failed *coup* attempt.

It is obviously not clear at this time how the final allocation of responsibilities and authorities between the republics and the central government will compare with the allocation of responsibilities between our fifty states and the federal government in the United States.

The second element of considerable contemporary interest in the Soviet republics is the American experience with separation of powers. How should powers be allocated among the *soviets* or legislative branches on the one hand and Presidents Gorbachev, Yeltsin, and the respective presidents of the other republics on the other? Will the judicial branch emerge in the Soviet Union as an autonomous and powerful branch as it has in the United States?

When I lectured the judges of the regional courts in Donetsk, they raised two major concerns about their system with me. The first sounded familiar to a visitor from the United States: the judges

8. See, e.g., Jean L. Bergel, *Principal Features and Methods of Codification*, 48 LA. L. REV. 1073, 1075 (1988).

9. RENÉ DAVID & JOHN E. C. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* § 525 (1985).

were concerned about their caseloads. The second concern, however, was far different from those of American judges and reflected a substantial difference between our systems. In the Soviet republics, the judges of the regional courts are under the authority and the jurisdiction of the Ministry of Justice, that is, the *procurator's* or prosecutor's office. Official Soviet publications claim the absence of separation of powers does not impact upon judicial decisions.¹⁰ Candid conversations with regional court judges indicate, however, that the judges themselves believe that this arrangement violates their own notions of fairness.

This is also a time of controversy and dramatic change in the Soviet republics on the issue of the relationship between private property and public ownership. Simply put, most real property in the Soviet republics is owned by the government as are most businesses and retail stores. Nevertheless, the system is beginning to change. While in the Soviet Union, in both Moscow and Donetsk, we visited small retail shops and met with craftsman who were individual proprietors. Further, farmers were cultivating small tracts of privately held land.

Although changes are in the wind at the time of this writing, there remain substantial obstacles to private ownership of manufacturing or other productive facilities in the Soviet republics. These barriers are particularly severe for foreign citizens hoping to invest in the former Soviet Union. At the current time, foreign individuals and corporations can participate in the Soviet system only as part of "joint ventures" with Soviet actors. Further, the Soviet currency, the *ruble*, is not freely convertible to dollars or other Western currencies. During our May 1991 visit to the Soviet Union, the "black market" conversion rate was approximately thirty *rubles* to one dollar. Of course, it was illegal to trade dollars for *rubles*. The "official" conversion rate for rubles and dollars for Soviet citizens was six *rubles* to a dollar, but for many purposes, tourists received only 1.8 *rubles* per dollar. Accordingly, legally exchanged American dollars are devalued substantially before they are spent or invested in

10. IGOR VOLOSHIN & LEV SIMKIN, *THE JUDICIAL SYSTEM IN THE USSR* (1989).

the Soviet Union. Further, restrictions prohibit or substantially reduce the ability of foreigners to remove profits or *rubles* from the Soviet republics.

Finally, the political and economic turmoil in the Soviet Union makes current Western investment a risky proposition at best. Before substantial investment and trade with the Soviet republics happens, changes in the Soviet system must occur. There will need to be an irreversible commitment to free-market principles and confidence within the American business community that the attempted transformation to a free-market economy will not result in social and economic revolution. In the past, Soviet citizens have benefited from both subsidized prices and a full-employment economy. Transportation on the Moscow subway, bread, and milk cost only a fraction of their real value. If Soviet price supports and controls are reduced or eliminated, the risk for substantial social upheaval is great.

Soviet citizens have benefited in the past from the security of a guaranteed full-employment economy. By West Virginia standards, the three-foot coal seams in the Donetsk area cannot be profitably mined. Yet to totally close these mines would result in the loss of more than 500,000 jobs, a coal industry employment rate that would make West Virginia's mining woes in recent decades look insignificant in comparison. I visited stores in the Soviet Union where it took three retail clerks to purchase the simplest good, such as a quart of milk. I saw scores of older women sweeping streets with brooms that were little more than bundles of sticks tied together with twine. In a free-market system, such jobs would not last long. The resulting social upheaval might be substantial.

In short, given the certain crisis atmosphere of the next several years, the Soviet republics face legal issues with profound political, social, and economic consequences including the following:

(1) How will responsibility and authority be allocated between the republics and the union or confederation?

(2) How will governmental powers be allocated among the executive, legislative, and judicial branches? Will there ever be a truly autonomous court system in the Soviet republics?

(3) Will there be a stable set of legal rules to govern private ownership of land, contracts, business organizations, and the rights of foreigners who wish to participate in the economies of the Soviet republics?

These are the kinds of issues that the students and the faculty of the West Virginia University College of Law will be studying firsthand as a result of the newly instituted exchange program between our law school and Donetsk University. Through this study, our graduates will become better equipped to practice in a rapidly changing world. At the same time, they will think more deeply about how these same issues manifest themselves — albeit much more subtlety and at a deeper level — in the American legal system.

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